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HILL, RN AND FRANK AKPATI, NP (ERRONEOUSLY NAMED AS FRANK AKPATY)

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 JOSE ANTONIO RODRIGUEZ,

14 Plaintiff,

15 vs.

16 NAPHCARE, INC.; FRANK AKPATY, NP;  
17 PORSCHE HILL, RN; ELOY ITUARTE, M.D.;  
WASHOE COUNTY SHERIFF'S DEPT.; AND  
18 DARRIN BALAAM

19 Defendants.

No. 3:21-cv-00185-MMD-CSD

**STIPULATED PROTECTIVE  
ORDER**

20  
21 Plaintiff seeks to obtain, inspect and copy documents and/or things which  
22 Defendants NAPHCARE, INC.; ELOY ITUARTE, M.D.; PORSCHE HILL, RN AND  
23 FRANK AKPATI, NP (hereinafter "NAPHCARE") contends contains private and  
24 sensitive information, confidential information of NAPHCARE, its officers and  
25 employees, its internal investigative and administrative actions, and other  
26 confidential information. Pursuant to an agreement by the Parties, the Court hereby  
27 enters the following Order for Protection (Protective Order):

28 ///

**TERMS OF PROTECTIVE ORDER**

**I. DEFINITIONS**

The following definitions apply to the Protective Order:

1. Party. Any party to this action, including all of its officers, directors, employees, consultants, Experts, and Outside Counsel.

2. Disclosure or Discovery Material. All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

3. "Confidential" Information or Items. Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under the law enforcement investigative and/or official information privileges, or that contain Criminal History Information, personal information regarding individuals including Social Security Numbers, dates of birth and information which a person would have a reasonable expectation of privacy. Confidential information shall also include information concerning, regarding, or as a result of covert or undercover law enforcement investigation(s) technique(s), method(s) or source(s), including the identity of any confidential informant, intelligence report, undercover officer information, or information referring to any undercover or active criminal investigations. Further, Confidential information shall also include any information protected from disclosure under Donrey v. Bradshaw, 106 Nev. 630 (1990) or an official or executive information privilege. Confidential information shall also include employee information, employee medical information, and employee disciplinary action, including any internal investigation concerning employee actions.

4. Receiving Party. A Party that receives Disclosure or Discovery Material or Confidential Information from a Producing Party.

5. Producing Party. A Party or third-party that produces Disclosure or

1 Discovery Material or Confidential Information in this action.

2 6. Designating Party. A Party or third-party that designates information or  
3 items that it produces in disclosures or in responses to discovery as "Confidential."

4 7. Protected Material. Any Disclosure or Discovery Material or Confidential  
5 Information that is designated as "Confidential."

6 8. Outside Counsel. Attorneys who are not employees of a Party but who  
7 are retained to represent or advise a Party in this action.

8 9. House Counsel. Attorneys who are employees of a Party.

9 10. Counsel (without qualifier). Outside Counsel and House Counsel (as  
10 well as their support staffs).

11 11. Expert. A person with specialized knowledge or experience in a matter  
12 pertinent to the litigation retained by a Party or its Counsel to serve as an expert  
13 witness or as a consultant in this action. This definition includes, but is not limited  
14 to, a professional jury or trial consultant retained in connection with this litigation.

15 12. Professional Vendor. Person or entity that provides litigation support  
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, organizing, storing, retrieving data in any form or medium; etc.)  
18 and its employees and subcontractors.

19 13. The use of the singular form of any word includes the plural, and vice  
20 versa.

## 21 II. SCOPE

22 The protection conferred by this Protective Order covers not only Protected  
23 Material, but also any information copied or extracted therefrom, as well as all  
24 copies excerpts, summaries, or compilations thereof, testimony, conversations, or  
25 presentations by parties or counsel to or in court or in other settings that might  
26 reveal Protected Material.

## 27 III. DURATION

28 Even after the termination of this action, the confidentiality obligations



1 imposed by this Protective Order shall remain in effect until a Designating Party  
2 agrees otherwise in writing or a court order otherwise directs.

3 **IV. DESIGNATING PROTECTED MATERIAL**

4 1. Manner and Timing of Designations. Except as otherwise provided herein,  
5 or as otherwise ordered, material that qualifies for protection under this Order  
6 must be clearly designated before it is disclosed or produced. Designations in  
7 conformity with this Order require:

8 a. For information in documentary form. That the Producing Party shall affix  
9 the legend "Confidential" on each page that contains Protected Material. If only a  
10 portion or portions of the material on a page qualifies for protection, the Producing  
11 Party also must clearly identify the protected portion(s) (e.g., by making  
12 appropriate makings in the margins or redacting protected portions). A Producing  
13 Party that makes original documents or materials available for inspection need not  
14 designate them for protection until after the inspecting Party has indicated which  
15 material it would like copied and produced. During the inspection and before the  
16 designation, all of the material made available for inspection shall be deemed  
17 "Confidential." After the inspecting Party has identified the documents it wants  
18 copied and produced, the Producing Party must determine which documents, or  
19 portions thereof, qualify for protection under this Order, and, before producing the  
20 specified documents, the Producing Party must affix the appropriate legend on  
21 each page that contains Protected Material. If only a portion or portions of the  
22 material on a page qualifies for protection, the Producing Party also must clearly  
23 identify the protected portion(s) (e.g., by making appropriated markings in the  
24 margins or by redacting protected portions).

25 b. For testimony given in deposition or in other pretrial or trial proceedings.  
26 That before the close of the deposition, hearing, or other proceeding, the Party or  
27 non-party offering or sponsoring the testimony shall identify on the record all  
28 protected testimony and further specify any portions of the testimony that qualify



1 as "Confidential." When it is impractical to identify separately each portion of  
2 testimony that is entitled to protection, the Party or non-party that sponsors, offers,  
3 or gives the testimony may invoke on the record (before the deposition or  
4 proceeding is concluded) a right to have up to thirty (30) days to identify the  
5 specific portions or the testimony as to which protection is sought. Only those  
6 portions of the testimony that are appropriately designated for protection under the  
7 standards set forth herein within the thirty (30) days shall be covered by the  
8 provisions of this Protective Order. Upon request of a Designating Party, transcript  
9 pages containing Protected Material must be separately bound by the court  
10 reporter, who must affix to the top of each such page the legend "Confidential" as  
11 instructed by the Party or non-party offering or sponsoring the witness or  
12 presenting the testimony.

13 c. For information produced in some form other than documentary, and for  
14 any other tangible items. That the Producing Party affix in a prominent place on the  
15 exterior of the container or containers in which the information or item is stored  
16 the legend "Confidential." If only portions of the information or item warrant  
17 protection, the Producing Party, to the extent practicable, shall identify the  
18 protected portions.

19 2. Inadvertent Failure to Designate. Inadvertent failure to identify documents  
20 or things as "Confidential" pursuant to this Protective Order shall not constitute a  
21 waiver of any otherwise valid claim for protection, provided that the provisions of  
22 this paragraph are satisfied. If the Designating Party discovers that information  
23 should have been but was not designated "Confidential" or if the Designating Party  
24 receives notice that would enable the Designating Party to learn that it has  
25 disclosed such information, the Designating Party must immediately notify all other  
26 parties. In such event, within thirty (30) days of notifying all other Parties, the  
27 Designating Party must also provide copies of the "Confidential" information  
28 designated in accordance with this Protective Order. After receipt of such

1 re-designated information, the "Confidential" information shall be treated as  
2 required by this Protective Order, and the Receiving Party shall promptly, but in no  
3 event more than fourteen (14) calendar days from the receipt of the re-designated  
4 information, return to the Designating Party all previously produced copies of the  
5 same unlegended documents or things. The Designating Party and the Parties may  
6 agree to alternative means. The Receiving Party shall receive no liability, under this  
7 Protective Order or otherwise, for any disclosure of information contained in  
8 unlegended documents or things occurring before the Receiving Party was placed  
9 on notice of the Designating Party's claims of confidentiality.

#### 10 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 1. Meet and Confer. A Party that elects to initiate a challenge to a  
12 Designating Party's confidentiality designation must do so in good faith and must  
13 begin the process by conferring with counsel for the Designating Party. The  
14 challenging Party must give the Designating Party an opportunity of not less than  
15 ten (10) calendar days to review the designated material, to reconsider the  
16 circumstances, and, if no change in the designations is offered, to explain in  
17 writing the basis for the confidentiality designation.

18 2. Judicial Intervention. A Party that elects to press a challenge to a  
19 confidentiality designation after considering the justification offered by the  
20 Designating Party may file and serve a motion that identifies the challenged  
21 material and sets forth in detail the basis for the challenge. Until the Court rules on  
22 the challenge, all parties shall continue to afford the material in question the level  
23 of protection to which it is entitled under the Producing Party's designation.

#### 24 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 1. Basic Principles. A Receiving Party may use Protected Material that is  
26 disclosed or produced by another Party or by a third-party in connection with this  
27 case solely for the limited purposes of prosecuting, defending, attempting to settle,  
28 or settling this action. Such Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in the Protective Order.  
2 Protected Material must be stored and maintained by a Receiving Party at a  
3 location and in a secure manner that ensures that access is limited to the persons  
4 authorized under this Protective Order.

5 2. Disclosure of "Confidential" Information or Items. Unless otherwise  
6 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
7 Party may disclose any information or item designated Confidential only to:

8 a. The Parties to this action and the Receiving Party's Outside Counsel of record in  
9 this action, as well as employees of said Counsel to whom it is reasonably  
10 necessary to disclose the information for this litigation. Counsel of Record shall be  
11 responsible for advising all of their staff of the existence of, and their confidentiality  
12 obligations under, the Protective Order, and shall be responsible for any  
13 non-compliance with the Protective Order by members of their staff that have not  
14 signed an agreement to be bound by the Protective Order; b. The officers,  
15 directors, and employees of the Receiving Party to whom disclosure is reasonably  
16 necessary for this litigation and who have signed or have agreed under oath and  
17 on the record to be bound by the "Agreement to Be Bound by Protective Order"  
18 (Exhibit A);

19 c. Experts of the Receiving Party to whom disclosure is reasonably  
20 necessary for this litigation and who have signed or have agreed under oath and  
21 on the record to be bound by the "Agreement to Be Bound by Protective Order"  
22 (Exhibit A);

23 d. The Court and its personnel;

24 e. Court reporters, their staffs, and Professional Vendors to whom disclosure  
25 is reasonably necessary for this litigation;

26 f. During their depositions or at trial, witnesses in the action to whom  
27 disclosure is reasonably necessary. Witnesses will not be permitted to retain  
28 copies of Protected Material unless they have signed or agreed under oath and on



1 the record to be bound by the "Agreement to Be Bound by Protective Order"  
 2 (Exhibit A). Upon request of a Designating Party, pages of transcribed deposition  
 3 testimony or exhibits to depositions that reveal Protected Material must be  
 4 separately bound by the court reporter and may not be disclosed to anyone except  
 5 as permitted under this Protective Order; and

6 g. The author of the document or the original source of the information and  
 7 recipients or addressees in the normal course of business.

8 Notwithstanding the preceding of this paragraph VI(2), a Party that has produced  
 9 its, his or her own Protected Material may disclose such Protected Material to any  
 10 persons, with or without any conditions placed upon such disclosure, as the Party  
 11 deems appropriate.

12 3. Trial and Dispositive Motion Disclosure: For the purpose of trial and/or  
 13 dispositive motions, the parties acknowledge that a "strong presumption in favor  
 14 of access" exists. A party seeking to seal a judicial record at trial and/or the  
 15 dispositive motions stage bears the burden of establishing "compelling reasons" by  
 16 "articulating compelling reasons supported by specific factual findings," that  
 17 outweigh the public policies favoring disclosure.'

18 4. Disclosure of Possession of Confidential Information. All persons  
 19 described in paragraph VI above shall not under any circumstances sell, offer for  
 20 sale, advertise, or publicize either the Confidential Information or the fact that such  
 21 persons have obtained Confidential Information.

## 22 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 23 **OTHER LITIGATION**

24 If a Receiving Party is served with a subpoena or an order issued in other  
 25 litigation that would compel disclosure of any information or items designated in  
 26 this action as "Confidential" the Receiving Party must so notify the Designating  
 27 Party, in writing (by fax or email if possible) immediately and in no event more  
 28 than seven (7) calendar days after receiving the subpoena or order. Such

1 notification must include a copy of the subpoena or court order. The Receiving  
2 Party also must within ten (10) calendar days inform in writing the party who  
3 caused the subpoena or order to issue in the other litigation that some or all the  
4 material covered by the subpoena or order is the subject of this Protective Order  
5 and deliver to such party a copy of this Protective Order. The Designating Party  
6 shall bear the burdens and the expenses of seeking protection in that court of its  
7 Confidential material — and nothing in these provisions should be construed as  
8 authorizing or encouraging a Receiving Party in this action to disobey a lawful  
9 directive from another court. Once notice is given, and five business days have  
10 elapsed, the receiving party shall have no further liability for disclosure pursuant  
11 to a subpoena or its equivalent.

#### 12 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has  
14 disclosed Protected Material to any person or in any circumstance not authorized  
15 under this Protective Order, the Receiving Party must immediately and within not  
16 more than seven (7) calendar days: (a) notify in writing (using best efforts to use  
17 email or fax) the Designating Party of the unauthorized disclosures, (b) use its best  
18 efforts to retrieve all copies of the Protected Material, (c) inform the person or  
19 persons to whom unauthorized disclosures were made of all the terms of the  
20 Protective Order, and (d) request such person or persons to execute the  
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A). The Receiving Party  
22 shall promptly notify the Designating Party of the results of its efforts with regards  
23 to (b), (c), and (d) herein. After a good faith meet and confer effort to resolve and  
24 remaining disputes concerning compliance with this paragraph, and Party,  
25 Receiving Party or Designating Party may seek relief from this Court for  
26 non-compliance with this provision. Said relief may include, but is not limited to,  
27 preclusion of the Receiving Party's use in this litigation of the Protected Material  
28 that was disclosed contrary to this Protective Order, or any other sanction deemed

1 appropriate by the Court.

2 **IX. PUBLICLY AVAILABLE OR PREVIOUSLY POSSESSED INFORMATION**

3 The restrictions in the preceding paragraphs regarding disclosure or  
4 Protected Material do not and shall not apply to information or material that: was,  
5 is, or becomes public knowledge in a manner other than by violation of the  
6 Protective Order, is acquired by the non-designating party from a third-party having  
7 the right to disclose such information or material; or was lawfully possessed by the  
8 non-designating party before the date of this Protective Order. The Designating  
9 Party shall act in good faith to notify the Receiving Party of any change in  
10 circumstances that renders Confidential Information or Items no longer  
11 Confidential within a reasonable time period after the change becomes known to  
12 the Designating Party.

13 **X. FILING PROTECTED MATERIAL**

14 With respect to non-dispositive motions and pleadings, Protected Material  
15 or information derived therefrom is included with, or the contents of such a  
16 document are disclosed in, any documents filed with the Clerk or this Court or any  
17 other court, the filing Party shall file said document under seal and in accordance  
18 with Local Rule 10-5(b). Unless otherwise agreed by the Parties to permit service  
19 by some other means such as by email or facsimile, copies of any pleading, brief  
20 or other document containing Protected Material that is served on opposing  
21 counsel shall be delivered in a sealed envelope stamped:

22 **CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER**

23 and shall be treated in accordance with the provisions of this Protective Order.  
24 Subject to the Court's convenience and needs, all material files in this fashion will  
25 be kept under seal by the Clerk until further order from the Court.

26 **XI. FINAL DISPOSITION**

27 Unless otherwise ordered or agreed in writing by the Producing Party, within  
28 sixty (60) calendar days of a written request, after the final termination of this



1 action, each Receiving Party must return all Protected Material to the Producing  
2 Party. As used in this subdivision, "all Protected Material" includes all copies,  
3 abstracts, compilations, summaries or any other form of reproducing or capturing  
4 any of the Protected Material. With permission in writing from the Designating  
5 Party, the Receiving Party may destroy some or all of the Protected Material instead  
6 of returning it. Whether the Protected Material is returned or destroyed, the  
7 Receiving Party must submit a written certification to the Producing Party (and, if  
8 not the same person or entity, to the Designating Party) by the thirty (30) calendar  
9 day deadline that identifies (by category, where appropriate) all the Protected  
10 Material that was returned or destroyed and that affirms that the Receiving Party  
11 has not retained any copies, abstracts, compilations, summaries or other forms of  
12 reproducing or capturing any of the Protected Material. Notwithstanding this  
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
14 papers, transcripts, legal memoranda, correspondence or attorney work product,  
15 even if such materials contain Protected Material. Any such archival copies that  
16 contain or constitute Protected Material remain subject to this Protective Order as  
17 set forth herein. In the event of an appeal, "Final Disposition" shall not occur until  
18 the conclusion of all appeals.

## 19 XII. ADDITIONAL PROVISIONS

20 1. Modification. The Parties may modify this Protective Order by written  
21 agreement, subject to approval by the Court. The Court may modify this Protective  
22 Order.

23 2. Right to Assert Other Objections. This Protective Order does not affect or  
24 waive any right that any Party otherwise would have to object to disclosing or  
25 producing any information or item on any ground not addressed in this Protective  
26 Order. Similarly, this Protective Order does not affect or waive any Party's right to  
27 object on any ground to use in evidence any of the material covered by this  
28 Protective Order.

1           3. Privileges Not Waived. This Protective Order does not affect or waive any  
2 applicable privilege or work product protection, or affect the ability of a Producing  
3 Party to seek relief for an inadvertent disclosure of material protected by privilege  
4 or work product protection.

5           4. Third Party Protections. Any witness or other person, firm, or entity from  
6 which discovery is sought may be informed of and may obtain the protection of  
7 this Protective Order by written notice to the Parties' respective counsel or by oral  
8 notice at the time of any deposition or similar proceeding.

9           5. Obligations to Third Parties. Nothing herein shall operate to relieve any  
10 Party or non-party from any pre-existing confidentiality obligations currently owed  
11 by any Party or nonparty to any other Party or non-party.

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6. Retention of Completed "Acknowledgment and Agreement to Be Bound" Forms (Exhibit A). Completed "Acknowledgment and Agreement to Be Bound" Forms (Exhibit A) ("form") shall be maintained by the Party that obtained the completed form pursuant to this Protective Order. The Party retaining the completed form shall produce the form to resolve any good faith challenge by a Party or Designating Party or dispute concerning whether a person who is obligated under this Protective Order to complete the form did so properly and complied with the representations in the form and this Protective Order. If the parties are unable to resolve any such disputes or challenges through a good faith meet and confer process, the challenging Party or Designating Party may seek appropriate relief from this Court.

IT IS SO STIPULATED this 26 day of February, 2022.

  
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 JOSE ANTONIO RODRIGUEZ  
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#### ORDER

Paragraph X is modified to reflect that any motion regarding filing confidential information and motions to seal shall also comply with the requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). See also, *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

**IT IS SO ORDERED.**

DATED: March 22, 2022.

  
 UNITED STATES MAGISTRATE JUDGE